**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR**

**WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929**

**OP.No. 718 of 2003(I)**
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**PETITIONER:**
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**C.A.JACOB, J.J.AGENCIES,**
**CHERPANATH HOUSE, P.O. ANNANAD, THRISSUR DISTRICT.**

**BY ADV. SRI.M.UNNIKRISHNA MENON**

**RESPONDENTS:**
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1. **THE INTELLIGENCE OFFICER (I.B),**
   **COMMERCIAL TAXES, THRISSUR.**

2. **COMMISSIONER OF SALES TAX,**
   **THIRUVANANTHAPURAM.**

**BY GOVERNMENT PLEADER SRI. MATHEW VADAKKEL**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**ORDER ON C.M.P.1218/2003, I.A.NO.16802/2004 AND I.A.NO.18550/2005 IN O.P.NO.718/2003 I**

**DISMISSED**

**4/07/2007** **SD/-T.R.RAMACHANDRAN NAIR,JUDGE**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P1:** **NOTICE OF THE RESPONDENT TO THE PETITIONER UNDER SECTION 45 A OF THE KGST ACT FOR THE YEAR 1996-97 DTD. 13/07/1999.**

**EXT.P2:** **NOTICE OF THE RESPONDENT TO THE PETITIONER UNDER SECTION 45 A OF the KGST ACT FOR THE YEAR 1997-98 DTD. 13/07/1999.**

**EXT.P3:** **OBJECTION OF THE PETITIONER TO EXHIBIT P1 AND P2 DTD. 1/09/1999.**

**EXT.P4:** **LETTER FROM POOJA SALES CORPORATION TO THE PETITIONER DTD. 31/03/1997.**

**EXT.P5:** **REPLY OF THE PETITIONER TO THE RESPONDENT DTD.1/09/1999.**

**EXT.P6:** **FORM 21 CC UNDER KGST ACT DTD. 12/02/2000 FOR THE YEAR 1996-97.**

**EXT.P7:** **FORM 21 CC UNDER KGST ACT DTD. 12/02/2000 FOR the YEAR 1997-98.**

**EXT.P8:** **FORM 21 CC UNDER KGST ACT DTD. 12/02/2000 FOR THE YEAR 1998-99.**

**EXT.P9:** **NOTICE OF THE RESPONDENT TO THE PETITIONER UNDER SECTION 45 A(1)(B)(D) &(G) OF THE KGST ACT DTD. 6/3/2000.**

**EXT.P10:** **OBJECTION OF THE PETITIONER TO THE RESPONDENT DTD. 29/03/2000.**

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**EXT.P11:** NOTICE OF THE RESPONDENT TO THE PETITIONER UNDER SECTION 45 A(1)(B)(D)(G) OF THE KGST ACT FOR THE YEAR 1996-97.

**EXT.P12:** PROCEEDINGS OF THE RESPONDENT UNDER SECTION 45A(1) (B)(D)(G) OF THE KGST ACT 1963 DTD. 24/06/2000.

**EXT.P13:** COPY OF THE ORDER ISUSED BY THE 2ND RESPONDENT DTD. 17/01/2002.

**EXT.P14:** COPY OF THE REVISION PETIITON FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD. 24/01/2002.

**EXT.P15:** COPY OF THE ORDER OF THE 2ND RESPONDENT DTD. 26/12/2002.

/TRUE COPY/

*KSS*

**T.R.RAMACHANDRAN NAIR, J.**

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**O.P.No.718 of 2003-I.**

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**Dated this the 4th day of July, 2007.**

**J U D G M E N T**

**The petitioner approached this Court mainly aggrieved by the order Ext.P15 issued by the second respondent. The petitioner started the business of purchase of monofilament cloth woven on powerloom named in the commercial parlance as mono cloth, manufactured by the parties outside the State ie., Gujarat. According to the petitioner, the sale of the said item is completely exempted under Section 9 and Item 10 of the third schedule of the Kerala General Sales Tax Act.**

**2. It is the case of the petitioner that the first respondent initiated action under Sec.45 A assuming that the commodity is assessable as "plastics". Notices were issued as evidenced by Exts.P1 & P2 and the petitioner submitted due reply as Ext.P3. Again he submitted further reply as Ext.P5. Subsequently it appears that after a lapse of some time he received Ext.P9 notice to which he submitted a reply through his counsel as Ext.P10. It appears that this was followed by other steps taken by the authorities. The first respondent passed an order as per Ext.P12 whereby he was imposed penalty of Rs.38,094/- under Sec.45A(1)(b)(d)(g) of the Act. This was**

challenged by the petitioner in OP.No.22838/2000 and a revision petition was also filed before the Deputy Commissioner. OP.No.22838/2000 was disposed of directing the disposal of the revision petition. The order passed by the Deputy Commissioner in the revision petition is Ext.P13 which was taken up in further revision before the 2nd respondent as per Ext.P14. The revision petition was dismissed by Ext.P15 and challenging the same this original petition has been filed. Petitioner has raised various grounds in the writ petition in support of his pleas.

3. Pending the writ petition this Court had passed an order in IA. No.18550/2005 calling for a report from the Commissioner of Central Excise of the Customs and Central Excise, Meghani Circle, Bhav Nagar, Gujarath in respect of the paints forwarded to it to ascertain the correct classification of the commodity in question. Thereafter the report dated 13-3-2006 has been forwarded to this Court by the Assistant Commissioner, Central Excise, City Division, Bhavnagar.

4. Heard parties.

5. The issue is whether the item is plastic, coming under the relevant entry. In Ext.P15 the revisional authority found against the petitioner after noticing that he has not produced any material in support of his claim. Now that a report mentioned above is available and is relied on by the petitioner the issue that is raised, therefore, has to be decided afresh by

**the second respondent after considering the said report also. To enable the second respondent to do so Ext.P15 is quashed. The 2nd respondent will again take up Ext.P14 and decide the matter afresh after considering the report dated 13-3-2006 forwarded to this Court by the Assistant Commissioner, Central Excise, City Division, Bhavnagar. The Government Pleader points out that the department has not received a copy of this report. Therefore, the Registry will forward a copy of the report to the second respondent along with copy of this judgment to enable the second respondent to consider the same and pass fresh orders. Needless to say that the second respondent has to pass a reasoned order on the issue after considering the new materials also. The interim order passed by this Court in CMP.No.1218/2003 will continue till orders are passed as directed above. The second respondent is directed to pass fresh orders as expeditiously as possible, at any rate, within a period of five months from the date of receipt of a copy of this judgment after hearing the petitioner and the department.**

**The original petition is disposed of as above.**

**T.R.RAMACHANDRAN NAIR, JUDGE.**

***Kvs/-***